IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1499 OF 2005

IN

S.C.SUIT NO.3801 OF 1998

ALONG WITH

CIVIL APPLICATION NO.1176 OF 2005

Mr.Chotelal B.Jaiswal ...Appellant

Versus

Mrs.Dashrathidevi Durgaprasad

& Ors. ...Respondents

.....

Mr.M.C.Hegde with Mrs.Jaya U.Pawar for Appellant.

Mr.M.P.Pandit i/b Mr.R.U.Singh for Respondents.

.....

**CORAM: A.M.KHANWILKAR, J.**

**JANUARY 18, 2006.**

**P.C.**

1. Heard Counsel for the parties. Perused the relevant record produced by the parties across the bar.

2. This Appeal takes exception to the Judgment and Order passed by the City Civil Court, Greater Mumbai dated 16th February 2005 in S.C.Suit No.3108 of 1998. The said Suit was filed by the Respondents/Plaintiffs for declaration that the Defendant/Appellant has no right, title or interest in a pan stall situated at Ramniwas Building adjacent to Noble Restaurant Corner, King Circle, Matunga, Mumbai - 19, and for consequential reliefs on the basis of title.

3. Insofar as the ownership of the suit stall is concerned, the evidence on record shows that the husband of the Plaintiff No.1 was the owner. He died in year 1946, whereafter, his brother Pannalal was looking after the business of pan stall. It is Pannalal who allowed the Defendant to carry on the business of pan stall. According to the Plaintiffs, Defendant was employed as servant to look after the pan stall business.

4. Insofar as the ownership of the pan stall is concerned, evidence on record, as rightly found

by the Court below, does indicate that the Plaintiffs are the owners thereof claiming through their predecessor Durgaprasad. Insofar as the case made out by the Plaintiffs that the Defendant was employed as servant by Pannalal to look after the pan stall business, the Court below has found that no clear evidence is forthcoming that Defendant was in occupation of the suit stall as servant of the Plaintiffs. To that extent, the Appellant may be right. However, what is relevant for consideration in the present Appeal is: whether the Defendant has established the case made out by him that he is owner of the suit stall? That is the precise stand taken by the Defendant in the written statement, as can be discerned from paragraph No.13 thereof. While denying that the Defendant was servant or the agent of the Plaintiffs and/or acted in hostility towards the Plaintiffs, the Defendant has asserted that he was the owner of the said pan stall business. No evidence to establish that case made out by the Defendant is adduced, as is rightly found by the Court below.

5. What is relevant to note in this case is

that the Defendant apprehending dispossession, had instituted Suit against the Plaintiffs being S.C.Suit No.403 of 1995 before the Bombay City Civil Court at Bombay. In this Suit, clear assertion has been made in Para 3(c) that the Defendant was in possession of the suit stall as he was permitted to conduct the business activities therein by Late Pannalal on monthly royalty. The said Suit was filed by the Defendant against the Plaintiffs for injunction not to dispossess him from the suit stall without following due process of law. As a consequence of the suit filed by the Defendant, the Plaintiffs were required to file the present suit being S.C.Suit No.3801 of 1998 for declaration and consequential relief. In the present Suit, in the written statement, the stand of the Defendant has changed and it is asserted as mentioned earlier in Para 13 of the written statement that he is the owner of the pan stall business. However, no evidence has been produced by the Defendant to establish this position, as is rightly found by the lower Court.

6. Before this Court, however, Counsel for

the Appellant would persuade me to take the view that the Appellant was tenant or licensee of the Plaintiffs in the suit stall. There is no specific plea taken by the Appellant in this behalf. Besides, no evidence has been adduced by the Defendant to establish that he was occupying the suit stall as licensee or as tenant. On the other hand, I am in agreement with the finding reached by the Court below that Defendant succeeded in renewing the license in respect of the suit stall business, in respect of which, Power of Attorney was given to him and was subsequently terminated. In other words, the Defendant/Appellant herein has not succeeded in establishing his status in respect of the suit premises, either that of owner or licensee/tenant, as is now sought to be contended.

7. For want of evidence, it is not possible to accept the claim of the Appellant/Defendant as pressed into service for the first time before this Court. No case for admission is made out. Hence, dismissed.

A.M.KHANWILKAR, J.